IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7889 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARSANBHAI RUGHATHBHAI - Appellant(s)
Versus
SPECIAL LAND ACQUISITION OFFICER & 1 - Defendant(s)

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Appearance :
MR ANUP PARASRAMPURIA for MR JAYESH M PATEL for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MR KM THAKKAR for M/S TRIVEDI & GUPTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/02/2007

ORAL JUDGMENT

1. Original claimant has approached this Court under Section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as the “Act”] to claim higher

compensation than the compensation awarded by the learned Assistant Judge, Mehsana by award dated 30th July, 1999 in Land Acquisition Reference No. 1426/1993. By the said award, the learned Judge has granted compensation at the rate of Rs.3.05 paise per sq. mtr., per year.

2. The agricultural land of the appellant has been occupied by respondent no. 2 under the provisions of Section 35 of the Act for implementation of ONGC Project. The date of the occupation is 28th May, 1992. The Special Land Acquisition Officer i.e., respondent no. 1 awarded Rs. 1.50 paise per sq. mtr., per annum. The difference as to the sufficiency of the compensation was referred to the Court under Section 35 (3) of the Act for its decision. Before the Court, the parties led evidence, oral as well as documentary. On the basis of the same, the learned Judge held that the compensation determined by respondent no. 1 was not sufficient and, therefore, the Court granted additional compensation of Rs.1.55 paise per sq. mtr.. i.e., in all Rs.3.05 paise per sq. mtr per year with interest at the rate of 9% from the date of taking the possession till one year and thereafter at the rate of 15% per annum till realization. The appellant was held entitled to have 20% more compensation under the head of standing crop etc., over

and above the compensation awarded under that head by respondent no. 1. The appellant being dissatisfied by the rate determined by the Court, has now preferred this appeal.

3. I have heard learned advocate Mr. Anup Parasrampuria for Mr, Jayesh Patel learned advocate for the appellant and learned advocate Mr. Kartik Thakkar for M/s. Trivedi & Gupta for respondent no. 2. It is submitted by Mr. Parasrampuria that the compensation awarded by the learned Judge is on lower side. According to him it ought to have been at the rate of at least Rs.5=00 per annum. He has further submitted that the concerned Special Land Acquisition Officer himself has awarded compensation for standing crop at the rate of Rs.5=00 per sq. mtr. As against that Mr. Thakkar has submitted that the appellant has placed reliance on Exh. 23, wherein, the compensation has been awarded at the rate of Rs.3.05 paise per sq. mtr., per annum. He has also submitted that the learned Judge has committed error by covering the entire period during which the ONGC has remained in occupation of the land in question, since under Section 35 of the Act, he had authority only to cover the period of three years from the date of the occupation. In his submission the award made by the Court

is just and proper and it is not required to be interfered with.

4. I have carefully considered the rival submissions. I have also perused the record of this appeal. It is true that the occupation was made on 28th May, 1992 on temporary basis under Section 35 of the Act. However, the ONGC has still retained the possession with it and has not even initiated proceedings under the Act for permanent acquisition. However, in the instant case, the dispute is in a very narrow compass. In other words, it is only with regard to the sufficiency of compensation and the period under Section 35 of the Act. Mr. Parasrampuria has drawn my attention to the compensation paid by the Special Land Acquisition Officer himself for the standing crop at the rate of Rs.5=00. However, it clearly appears that it was given in view of the fact that vegetables like brinjal, cucumber/dumb-bell and other similar vegetables were standing in the field. Naturally when disposition of such vegetables is there, the rate of compensation would be slightly higher than the compensation determined for crops like Bajri, Jowar etc. The Extracts of Revenue record further show that so far as the vegetables are concerned it was only in one year i.e. 1991-92 that is the time when the possession

was taken. However, in the subsequent years and also in the years prior to that no vegetables have been grown. In view of the same, it can safely be presumed that such vegetables were grown in the year 1991-92 only. Hence, the rate of payment made available for compositing the standing vegetables cannot be criteria for awarding compensation.

5. Mr. Thakkar has placed reliance on the decision rendered by this Court in the case of Patel Sambhubhai Bhaichanddas v. State of Gujarat and Ors., in First Appeal No. 2568 of 1999 to First Appeal No. 2570 of 1999, dated 27th December, 2006. In the said decision, this Court has awarded Rs. 3.20 paise for the lands situated at village Chalasan, which is also in Taluka Kadi. On those lands, similar crops were grown and that was the acquisition on temporary basis in the year 1991. In the present case, it is of the year 1992. In that case this Court awarded Rs.3.20 paise per. sq. mtr., per annum. In the present case, the occupation is little later i.e., on 28th May, 1992. Of course, there is evidence to show that there is increase in the price. This fact is reflected from Exh. 4. It is, therefore, not difficult to appreciate that the rate of compensation in the instant case ought to have been slightly higher than the

compensation awarded in Patel Sambhubhai Bhaichanddas v. State of Gujarat and Ors., (supra). Here it is almost short by 15 paise per sq. mtr. In view of the overall evidence and decision in the case of Patel Sambhubhai Bhaichanddas v. State of Gujarat and Ors., (supra), in my opinion, the just compensation could be of Rs.3.25 paise per sq. mtr., i.e., additional compensation of Rs.0.29 paise per sq. mtr., per annum. Again the Reference Court has covered the entire period of occupation. This is not legal. In the case of Patel Sambhubhai Bhaichanddas v. State of Gujarat and Ors., (supra) this Court has categorically held that the Collector and the Court has power to deal with the temporary occupation /acquisition under Section 35 of the Act only for three years and not beyond that. Though the ONGC has neither preferred substantive appeal or cross objections, this being neat point of law, Mr. Thakkar has agitated it and now it is required to be accepted in view of provisions of Order 41 Rule 33 of the Civil Procedure Code. Hence, the amount awarded to the appellant would be effective only for a period of three years from the date of the occupation i.e., 28th May, 1992 and beyond that the award shall not have any effect.

6. In view of the aforesaid, this appeal is partly allowed with no order as to costs.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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